



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2021-0947; FRL-10473-02-R4]

#### **Air Plan Approval; Mississippi; PSD and Air Quality Modeling Infrastructure**

#### **Requirements for the 2015 8-hour Ozone National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is conditionally approving portions of a State Implementation Plan (SIP) submission provided by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), via a letter dated January 25, 2021, and supplemented through a letter dated November 18, 2022. This approval pertains to certain infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standards (NAAQS or standards). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of that NAAQS. The January 25, 2021, SIP submission addresses all infrastructure elements except for those pertaining to the contribution to nonattainment or interference with maintenance of the NAAQS in other states. EPA is conditionally approving the portions of the submittal related to the prevention of significant deterioration (PSD) infrastructure elements and the air quality modeling element.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2021-0947. All documents in the docket are listed on the [www.regulations.gov](https://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by

statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8994. Ms. LaRocca can also be reached via electronic mail at [larocca.sarah@epa.gov](mailto:larocca.sarah@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On October 1, 2015, EPA promulgated revised primary and secondary NAAQS for ozone, revising the 8-hour ozone standards from 0.075 parts per million (ppm) to a new more protective level of 0.070 ppm. *See* 80 FR 65292 (October 26, 2015). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIP revisions meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS. This particular type of SIP is commonly referred to as an "infrastructure SIP" or "iSIP." States were

required to submit such SIP revisions for the 2015 8-hour ozone NAAQS to EPA no later than October 1, 2018.<sup>1</sup>

This action conditionally approves portions of Mississippi's January 25, 2021, SIP revision, as supplemented on November 18, 2022,<sup>2</sup> provided to EPA through the MDEQ for the applicable requirements of the 2015 8-hour ozone NAAQS regarding the PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), and the air quality modeling element of section 110(a)(2)(K).<sup>3</sup> Mississippi's submission included a written commitment under CAA section 110(k)(4) to take action to meet the requirements of the PSD and air quality modeling elements for its 2015 ozone iSIP by adopting a rule revision no later than one year after EPA's conditional approval of these portions of Mississippi's ozone iSIP. Specifically, MDEQ intends to amend 11 Mississippi Administrative Code (MAC), Part 2, Chapter 2, as well as 11 MAC, Part 2, Chapter 5, to cite to the current version of 40 CFR part 51, Appendix W, *Guideline on Air Quality Models*. Separately, EPA took final action on the remaining elements of Mississippi's January 25, 2021, SIP revision with the exception of the visibility protection provisions of section 110(a)(2)(D)(i)(II).<sup>4</sup> EPA will consider the portion of Mississippi's January 25, 2021, SIP revision that addresses the visibility protection provisions in a separate rulemaking.

Through a notice of proposed rulemaking (NPRM) published on December 23, 2022 (87 FR 78896), EPA proposed to conditionally approve changes to portions of Mississippi's 2015 8-hour Ozone NAAQS iSIP contained in MDEQ January 25, 2021, submittal as supplemented

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<sup>1</sup> In infrastructure SIP submissions, states generally certify evidence of compliance with sections 110(a)(1) and (2) of the CAA through a combination of state regulations and statutes, some of which have been incorporated into the SIP. In addition, certain federally approved, non-SIP regulations may also be appropriate for demonstrating compliance with sections 110(a)(1) and (2).

<sup>2</sup> On November 21, 2022, Mississippi submitted a letter, dated November 18, 2022, related to its request for conditional approval of the PSD provisions related to major sources under sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J), and the air quality modeling element of section 110(a)(2)(K). This letter is in the docket for this proposed rulemaking.

<sup>3</sup> On September 6, 2019, Mississippi provided a SIP submission addressing the interstate transport provisions of section 110(a)(2)(D)(i)(I) pertaining to contribution to nonattainment or interference with maintenance of the NAAQS in other states. EPA will address the interstate transport provisions of section 110(a)(2)(D)(i)(I) through a separate rulemaking.

<sup>4</sup> See 87 FR 57832 (September 22, 2022).

November 18, 2022. The details of Mississippi's submission, as well as the background and EPA's rationale for conditionally approving the changes, are described in more detail in the December 23, 2022, NPRM. Comments on the December 23, 2022, NPRM were due on or before January 23, 2023. No comments were received.

## **II. Final Action**

EPA is conditionally approving the portions of the 2015 8-hour Ozone NAAQS iSIP that address the PSD related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J), and the modeling requirements of 110(a)(2)(K). With the exception of the visibility provisions, EPA has already taken final action on the remainder of Mississippi's January 25, 2021, submittal. EPA will consider Mississippi's visibility provisions in the January 25, 2021, SIP revision through a future rulemaking.

## **III. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely conditionally approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA

will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2) of the CAA.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 22, 2023.

**Daniel Blackman,**  
*Regional Administrator,*  
*Region 4.*

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

**PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart Z - Mississippi**

2. Section 52.1276 is added to read as follows:

**§ 52.1276 Conditional approval.**

Mississippi submitted a SIP revision to EPA on January 25, 2021, as supplemented on November 18, 2022, regarding Mississippi's 2015 8-hour Ozone NAAQS infrastructure SIP that addresses the prevention of significant deterioration related requirements of CAA sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (Prong 3), and 110(a)(2)(J), and the modeling requirements of

110(a)(2)(K). The SIP revision included a commitment to adopt a rule revision to meet requirements of these sections and submit a SIP revision containing the revised rules. EPA conditionally approved these portions of the January 25, 2021, SIP revision, as supplemented November 18, 2022, in an action published in the *Federal Register* on **[INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]**. If Mississippi fails to meet its commitment by **[INSERT DATE ONE YEAR AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**, the conditional approval will become a disapproval on **[INSERT DATE ONE YEAR AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**.

3. In § 52.1270, in paragraph (e), amend the table by adding an entry for “110(a)(1) and (2) Infrastructure Requirements for the 2015 8-hour Ozone NAAQS” at the end of the table to read as follows.

**§52.1270 Identification of plan.**

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(e) \* \* \*

**EPA Approved Mississippi Non-Regulatory Provisions**

<b>Name of non-regulatory SIP provision</b>	<b>Applicable geographic or nonattainment area</b>	<b>State submittal date/effective date</b>	<b>EPA approval date</b>	<b>Explanation</b>
**	**	*	*	*
110(a)(1) and (2) Infrastructure Requirements for the 2015 8-hour Ozone NAAQS	Mississippi	1/25/2021	[Insert date of publication in the Federal Register], [Insert citation of publication]	Addressing and conditionally approving the PSD elements of sections 110(a)(2)(C), (D)(i)(II), and J, and section 110(a)(2)(K) only.